Navigator Communications Systems, LLC and Aviator Voice/Data, LLC and KM Communications, LLC *and* International Brotherhood of Electrical Workers, AFL–CIO. Cases 34–CA–8215 and 34–CA–8328

August 22, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

On November 17, 1999, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondents filed exceptions and supporting briefs.[1] The General Counsel and the Charging Party each filed an answering brief. The Respondents filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Navigator Communications Systems, LLC, Aviator Voice/Data, LLC, and KM Communications, LLC, Stamford, Connecticut, their officers, agents, successors, and assigns, shall jointly and severally take the action set forth in the Order.

Darryl Hale, Esq., for the General Counsel.
Raymond G. McGuire, Esq. and *Lyle S. Zuckerman, Esq.,* for Respondents Navigator and KM.
David M. Fish, Esq., for Respondent Aviator.
Martin J. Crane, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in Hartford, Connecticut, on July 20 and August 12–13, 1999. The Union, International Brotherhood of Electrical Workers, AFL–CIO filed the initial charge in Case 34–CA–8215 on January 30, 1998. This charge was subsequently amended on February 13, 1998, May 22, 1998, and September 2, 1998. The Union filed the initial charge in Case 34–CA–8328 on April 15, 1998, and amended it on October 15, 1998. Based on these charges, as amended, the consolidated complaint issued on October 19, 1998, alleging that Navigator Communications Systems, LLC (Navigator), Aviator Voice/Data, LLC (Aviator), and KM Communications, LLC (KM), the Respondents, as a single employer, violated Section 8(a)(1) and (5) and Section 8(d) of the Act. The complaint allegations relate to Respondent Navigator's cessation of operations and layoff of employees represented by the Union on August 15, 1997.[1] Each of the Respondents filed an answer to the complaint denying that they were a single-integrated business enterprise and a single employer within the meaning of the Act and denying the commission of any unfair labor practices.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, Respondents Navigator and KM,[3] and Respondent Aviator, I make the following

FINDINGS OF FACT

I. JURISDICTION

Each of the Respondents is a limited liability corporation organized under the laws of the State of Connecticut. At all relevant times, Respondent Navigator had its principal office at 470 West Avenue, Stamford, Connecticut, where it was engaged in the business of selling, installing, and servicing PBX telephone systems to customers in the hotel industry. Respondent Aviator, also with offices at 470 West Avenue in Stamford, Connecticut, was engaged in the business of selling, installing, and servicing telephone systems to commercial customers outside the hotel industry. Respondent KM, located at One Dock Street in Stamford,

[1] We deny the Charging Party's motion to strike exceptions, the General Counsel's motion to strike exceptions, and the General Counsel's two motions to strike belated exceptions. We grant the Respondents' cross-motions to file exceptions. We find that the delay in the filing of certain exceptions was excusable. We further find that, although the Respondents' initial briefs did not specifically include separate exceptions, the answering briefs filed by the General Counsel and the Charging Party demonstrated that they were fully apprised of the issues raised and therefore were not prejudiced by the technical failure. *Magic Chef, Inc*., 181 NLRB 1136 fn. 1 (1970); *Brazos Electric Power Cooperative, Inc*., 241 NLRB 1016 fn. 1 (1979).

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[1] All dates hereinafter are in 1997 unless otherwise indicated.

[2] Prior to resting his case on August 12, 1999, the General Counsel sought to call Thomas Kelly Jr., one of the managing members of Respondents Navigator and KM, as a witness. Kelly was not present in the hearing room at the time and had not been present throughout the hearing. The General Counsel's subpoena ad testificandum, requiring Kelly's appearance at the hearing, had been sent by certified mail and overnight delivery on August 10, 1999. At the time the General Counsel called Kelly to the stand, there was no proof that he had yet been served. On inquiry by counsel for Respondents Navigator and KM, it was learned that Kelly was not even in the State of Connecticut when the General Counsel served the subpoena and called him to the stand. I denied the General Counsel's request to adjourn the proceedings until Kelly, or some other representative of Respondent KM who had not yet been subpoenaed, could be produced to testify as a witness for the General Counsel. The hearing had already been adjourned for 3 weeks to permit the General Counsel to review subpoenaed documents. I determined that any further delay could have been avoided by the General Counsel having served a subpoena upon Kelly in sufficient time to ensure his attendance when the hearing resumed. By order dated September 14, 1999, the Board denied the General Counsel's request for special permission to appeal my ruling.

[3] The General Counsel moved to strike two exhibits attached to the brief filed by Respondents Navigator and KM and any references to those exhibits in the brief. The attached documents were not newly discovered nor unavailable at the time of the hearing. The Respondent has advanced no reason for allowing the posthearing receipt of these unauthenticated documents. Accordingly, I shall grant the General Counsel's motion to strike and will disregard exhibits A and B and any references thereto contained in the Respondent's brief. See *Southern Florida Hotel & Motel Assn.,* 245 NLRB 561 fn. 6 (1979).

Connecticut, was engaged in the business of providing shared telephone service, including local and long distance, and internet service, to tenants of office buildings in the vicinity of Stamford, Connecticut. There is no dispute that each of the Respondents annually derived gross revenues in excess of $100,000 in the conduct of their business and annually purchased and received at their respective Stamford, Connecticut facilities, goods valued in excess of $50,000 directly from points outside the State of Connecticut.

The individual Respondents have admitted, by their respective answers which were amended at the hearing, that each is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and I so find. The Respondents have further admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Evidence

The record establishes, and it is essentially undisputed, that Respondent Navigator recognized the Union on January 23, 1996, as the exclusive collective-bargaining representative of a unit of its technicians engaged in the installation and service of telecommunications systems within the geographic United States. Robert Howard, the president of Respondent Navigator, signed an agreement that date adopting, with some modifications, a collective-bargaining agreement in effect between the Union and another employer, Mitel Telecommunications Systems, Inc. (Mitel).[4] The collective-bargaining agreement, as modified by the January 1996 agreement, was to be effective through October 30, 1997.[5]

Pursuant to section 7 of the collective-bargaining agreement, an employee who was laid off after October 7, 1996, would receive a gratuity payment equal to 100 percent of his vacation entitlement. In addition, section 12.A of the agreement provided that employees who were terminated for any reason would receive payment for any unused vacation time which had accrued in the preceding vacation year (defined by the contract as January 1 through December 31). Unit employees were also entitled, under section 10 of the contract, to reimbursement for all reasonable living expenses incurred as a result of work assignments away from the employee's base of operations. Section 26 of the collective-bargaining agreement also required Respondent Navigator to provide unit employees with group life insurance, temporary disability insurance, and comprehensive medical insurance. In the January 1996 recognition agreement, Respondent Navigator agreed to provide a qualified 401(k) savings and retirement plan for unit employees and to "make matching contributions equal to 50 percent of the employee contributions of the first 6 percent of base pay (up to a maximum of $3000) contributed through salary deferral."

It is undisputed that Respondent Navigator ceased operations and laid off all its unit employees on August 15. Employees were informed that day, by a letter which was signed by Joseph F. Grosso, that Respondent Navigator was closing down because it had exhausted its cash and credit and was functionally bankrupt. Respondent Navigator admitted, in its answer, that it did not provide the Union with advance notice of this action. James Brimer, the Union's International representative responsible for servicing the unit, testified that he learned of the shutdown from unit employees late that Friday afternoon. Brimer was unable to reach any representative of the Company until the middle of the following week. He spoke to Grosso at that time, who confirmed that Respondent Navigator was bankrupt and out of business. When Brimer asked about the employees' 401(k) and other benefits, Grosso said he would look into it. Brimer asked for some official notice regarding the shutdown. Brimer testified that, after Labor Day,[6] he received an undated letter, signed by Grosso on Navigator letterhead, officially notifying him of the cessation of business and stating Respondent Navigator's intention not to renegotiate the collective-bargaining agreement.

By letter dated September 5, the Union filed a grievance on behalf of all unit employees, demanding payment of all moneys due the employees under the terms of the collective-bargaining agreement.[7] The Union requested, in the same letter signed by International President J. J. Barry, that Respondent Navigator provide the Union with a list of all unit employees and the amounts due each for accrued vacation, layoff gratuity, 401(k) matching funds, and reimbursable incurred travel expenses. Brimer testified that the Union has never received this information. Brimer testified further, based on conversations with unit employees, that Respondent Navigator has not paid employees their accrued benefits, nor reimbursed all travel expenses incurred prior to the cessation of business.

On February 13, 1998, the Union sent a letter to Respondent Navigator requesting detailed information regarding the relationship between Navigator and Aviator. Brimer testified that this request was made after he became aware, through conversations with technicians formerly employed by Respondent Navigator, that Aviator might be working on Navigator contracts. According to Brimer, he was unaware of Aviator's existence before Respondent Navigator ceased operations. Respondent Navigator never responded to this letter. However, Grosso responded, by letter dated February 24, 1998, on Aviator letterhead. In this letter, Grosso stated that, since he no longer had a consulting relationship with Navigator, he had no obligation to respond to the Union's inquiries directed to Navigator. Grosso went on to respond in part to the Union's inquiry in his capacity as a managing member of Respondent Aviator. In the letter, he denied that he was an employee of Navigator, characterizing his relationship as that of a consultant, and denied any equity or other financial interest in Navigator. After describing the formation of Aviator and its business, he denied that Aviator had any relationships with any former customers of Navigator and denied employing any employees previously employed by Navigator. According to Grosso's letter, the only relationship between Navigator and Aviator "is that we have offices in the same building where Navigator had its offices." Grosso ended his letter by inviting the Union to provide any specific information it had upon which it based its belief that Navigator and Aviator were related enterprises. Although Grosso asserted in his letter that his relationship as a consultant to Navigator ended when Navigator went out of business, he signed letters from Navigator to the Connecticut State Department of Labor, dated

[4] Respondent Navigator had purchased a part of Mitel's business and had hired the employees working in that part of the business.

[5] The Charging Party argued at the hearing that the agreement automatically renewed for another year because of Respondent Navigator's alleged failure to notify the Union of its intention to terminate the agreement within the time specified in the agreement. I find it unnecessary to resolve this issue. There is no dispute that the agreement was in effect at the time of the alleged unfair labor practices. The General Counsel specifically disavowed any claim that any of the other entities had continued the business of Respondent Navigator or that any employees who would be covered by the agreement were still employed after October 30, 1997.

[6] The 1997 calendar reveals that Labor Day was September 1.

[7] There were approximately 41 employees in the unit at the time.

October 27 and January 6, 1998, in response to a wage claim filed by one of the laid off employees of Respondent Navigator.

The above facts regarding the alleged unfair labor practices are largely undisputed. The primary issue in this case is whether Respondents Aviator and/or KM may be held liable for any unfair labor practices committed by Respondent Navigator.[8] The General Counsel and the Charging Party seek to impose liability on Respondents Aviator and KM solely on a single-employer theory, disavowing any claim that they are alter egos of Respondent Navigator. The Respondents deny that the three entities were sufficiently integrated to meet the Board's test for single-employer status. In determining whether two nominally separate employing entities constitute a single employer, the Board looks to four factors, i.e., common ownership, common management, interrelation of operations, and centralized control of labor relations. No single factor is controlling and not all need be present. Rather, single-employer status depends on all the circumstances and is characterized by the absence of the arm's-length relationship found between unintegrated entities. *Radio Technicians Local 1264 v. Broadcast Service of Mobile,* 380 U.S. 255, 256 (1965); *Dow Chemical Co.,* 326 NLRB 288 (1998), and cases cited therein. See also *Denart Coal Co.,* 315 NLRB 850, 851 (1994); and *Hydrolines, Inc.,* 305 NLRB 416, 417 (1991). The burden is on the General Counsel to prove that the three entities here are a single employer. *Masland Industries,* 311 NLRB 184, 186 (1993).

Respondent KM was organized in 1993 with Tom Kelly and William Merritt as the principal equity owners and sole managing members.[9] Each also contributed $20,000 in capital. Partnership tax returns in evidence show that the Company started in business on April 15, 1994. According to a letter submitted to the Board's regional office by its counsel, its business purpose was to "provide telephone services in buildings controlled by a partnership which included Messrs. Kelly and Merritt."[10] KM's principal office was located in one of these buildings, One Dock Street in Stamford, Connecticut. KM does not have any employees. The individuals who perform billing, customer service, filing, and other functions for KM are employed by Integrated Communication Services (ICS), which shares offices with KM. Victoria Ruther, one of these employees, testified at the hearing that she was hired by Kelly.[11]

On April 10, 1995, Kelly and Merritt, as managing members, filed Articles of Organization with the Connecticut Secretary of State creating Respondent Navigator. The principal office address was "c/o Integrated Communication Systems, One Dock Street, Stamford, Connecticut" and Merritt, at the same address, was designated the statutory agent for service of process. The stated purpose of the business was "to provide communication services including designing, installing, and operating telephone data switching equipment and to engage in any other lawful act or activity for which limited liability companies are permitted" by statute. Respondent Navigator's operating agreement was signed by Meritt, Kelly, and Robert J. Howard as members on July 21, 1995. At the time the Company was formed, each owned a one-third share and all three were identified as the managing members. Each contributed $1000 in capital. In addition to the members' shares, Respondent Navigator issued convertible debentures which could be converted to voting shares in the Company. Kelly, Merritt, and Howard held a significant amount of these debentures. Tax returns filed by Respondent Navigator for calendar years 1995 through 1997 show that the percentage of ownership of the principals fluctuated, perhaps due to conversion of the debentures into membership shares in the Company. By the end of 1997, Howard and Merritt each held only a 5-percent share with Kelly holding the remaining 90 percent. The principal office identified in the operating agreement was 2 Stamford Landing, Stamford, Connecticut, another building owned by Merritt and Kelly. Respondent Navigator's first tax return indicates that the Company started in business on June 1, 1995.

Respondent Navigator's counsel, in its position letter, stated that Navigator was formed by Howard to acquire the hotel telephone installation and service business of Mitel with Kelly as a significant investor in the acquisition and Meritt a smaller investor. This is consistent with other evidence in the record. Stephen Futrell, who was hired by Howard on August 1, 1995, to be Respondent Navigator's director of engineering, testified that he was told by Howard that Respondent Navigator had acquired part of Mitel's business and that Kelly put the financing together. Brimer, the Union's representative who conducted the negotiations leading to the January 1996 recognition agreement, testified that Respondent Navigator's counsel told him during the negotiations that Kelly was Respondent Navigator's principal. The record also contains a handwritten undated letter from Merritt to Joe Lederhas, who was identified as a human resources consultant, which sets forth the details of the acquisition and Merritt's plans regarding the hiring of employees and their benefits. In this letter, Merritt stated his intention "to have benefits close to what the employees had before with an emphasis on 401(k) profit sharing." He further states that Rob Howard will be the president. At the end of the letter, Merritt states that he was "trying to get Mitel to do payroll and keep the employees on their benefit plans until we can get established." As noted above, Respondent Navigator voluntarily recognized the Union as bargaining representative of the technicians it hired to perform the work acquired from Mitel. The January 1996 recognition agreement signed by Respondent Navigator and the Union provides for the establishment of a 401(k) plan.

Respondent KM was also involved in the formation of Respondent Aviator. As admitted in the Respondent's position letter:

> KM became dissatisfied with its existing telephone maintenance vendors, and in late 1994 or early 1995 approached the Barrett Brothers to set up a telephone service company that would provide maintenance and services to KM, among others. In January 1996, the Barretts, together with Joseph Grosso, agreed to organize their own company, provided they received a minimum guarantee of KM's business for at least a year. As a result, KM guaranteed $200,000 in revenues to Aviator, of which $100,000 was in the form of payments for maintenance services provided to KM, and the second $100,000 was in the form of reimbursement to Aviator for personal services rendered by Aviator personnel to Navigator.

[8] It appears that Respondent Navigator is essentially defunct and without assets to satisfy any remedial order that might issue in this case.

[9] The "Restated Operating Agreement of KM Communications Services, LLC," effective January 1, 1997, shows that Kelly and Merritt each owned a 42.5-percent share of the business and that Respondent Aviator owned a 10-percent share. The remaining 5 percent was held by Joseph Britell. Neither Respondent Aviator nor Britell were capital contributors nor managing members of the company.

[10] The Board has held that such written statements of position, when not disavowed prior to the hearing, are admissible as admissions of a party as to material facts. *Masillon Community Hospital,* 282 NLRB 675 fn. 5 (1987). Accord: *Hogan Masonry,* 314 NLRB 332, 333 fn. 1 (1994).

[11] ICS is not a party to these proceedings.

The organizational documents of Respondent Aviator in evidence reveal that it was organized on January 15, 1996, with its principal office at 2 Stamford Landing in Stamford, Connecticut, the same as that specified in Respondent Navigator's operating agreement. Brothers Dennis and James Barrett and Grosso each held a 26.66-percent share of the Company, with the remaining 20 percent held by Respondent KM. Grosso and the Barretts were designated as Respondent Aviator's managing members. Merritt signed the initial operating agreement as KM's managing member and was designated Respondent Aviator's statutory agent for service in the articles of organization filed with the Secretary of State. Respondent Aviator's tax returns indicate that it started in business on February 5, 1996.

KM's revenue guarantee to Aviator is embodied in a written letter dated February 19, 1996. The letter, which is signed by Kelly and Merritt, confirms the "agreement concerning the services . . . Aviator will provide . . . Navigator and the KM Group of tenants sharing and reselling (KM Communications Services, LLC, KM Dock Street Communications Services, LLC, KMF Communications Services, LLC, and Integrated Communications Systems Corp) (KM Group), companies which are controlled by us." Under the agreement, Respondent Aviator would provide the consulting services of Grosso for 1 year, with an option for a second year, at the rate of $150,000. In addition, Respondent Navigator guaranteed consulting work totaling $100,000 in fees for 1 year at the rate of $800/day for Dennis Barrett and $400/day for other Aviator employees. The agreement provided further that Respondent Navigator would designate Aviator its prime subcontractor for installation and service in metropolitan New York and southern Connecticut, "provided Aviator's rates are competitive with the prevailing subcontract rates in the area." The agreement required the KM Group to designate Aviator to manage and perform its operations functions, including installation and maintenance, for a year with a guaranteed payment of $100,000 for these services. In consideration for these guarantees, Respondent KM acquired its 20-percent membership interest in Aviator and Respondent Aviator was given a 10-percent membership interest in Respondent KM and KM Dock Street Communications Services, LLC. Barrett signed the acceptance of agreement as managing member of Respondent Aviator and Merritt signed on behalf of Navigator and each of the members of the KM Group ratifying the agreement. Howard, the president of Navigator, did not sign the letter of agreement.

This agreement was implemented in early 1996 when Respondent Navigator's president, Howard, informed its employees, by telephone conference, that Grosso and Dennis Barrett were joining the Company to help out. Later, Howard told Futrell that Grosso was in charge and that all decisions had to go through Grosso. Union Representative Brimer testified that, in early 1996, when he called Howard regarding a termination grievance for an employee of Respondent Navigator, Howard directed Brimer to call Grosso. When Brimer called Grosso, Grosso identified himself as Respondent Navigator's vice president of corporate operations. According to Brimer, Grosso did not identify himself as a consultant. Brimer proceeded to discuss the grievance with Grosso, eventually coming to an agreement to resolve the grievance. Grosso signed the May 9, 1996 letter memorializing the agreement as Respondent Navigator's vice president of corporate operations and administration.

Grosso admitted that he was Respondent Navigator's vice president of administration and operations from February 1996 until the Company ceased operations on August 15 and that Dennis Barrett, one of his partners in Respondent Aviator, served as Respondent Navigator's director of field operations during the same period. Grosso testified that Kelly asked him and Barrett to work for Respondent Navigator. According to Grosso, Howard remained the president of Respondent Navigator and was in charge of sales after Grosso and Barrett came aboard. Grosso admitted that Dennis Barrett supervised Respondent Navigator's field technicians represented by the Union.

Respondent Navigator had its principal office in Mt. Laurel, New Jersey, in 1996 when Grosso and Barrett assumed their respective positions with Respondent Navigator. Respondent Aviator was located in Connecticut at the time. There is no dispute that, in early 1997, Respondent Navigator moved its offices to 470 West Avenue in Stamford, Connecticut, the same building where Respondent Aviator had its offices at the time.[12] Futrell testified that Howard told him that Kelly directed that the offices be moved to Connecticut.

Futrell, who was Respondent Navigator's director of engineering, testified that Respondent Navigator customarily installed telephone systems in hotels using Hitachi equipment until early 1997. At that time, while Futrell was in the midst of designing a system for a potential customer, a hotel chain called Extended Stay America, he was told by Howard that Kelly wanted Respondent Navigator to consider using equipment manufactured by a company called Nitsuko because it would be less costly. Kelly then called Futrell and told him to go to the Stamford, Connecticut offices of Nitsuko, another manufacturer of telephone switching equipment to check it out. In fact, Kelly accompanied Futrell to Nitsuko's office. Futrell then re-designed the bid for the Extended Stay America contract utilizing Nitsuko equipment. After Respondent Navigator won the contract from Extended Stay America, Futrell was told by Grosso to recalculate the job cost with Respondent Aviator doing the assembly and programming of the Nitsuko equipment at a cost to Respondent Navigator of $3500 per hotel. Futrell testified that, in his opinion, this figure was inflated. There is no dispute that James Barrett, one of the partners in Respondent Aviator, built and programmed the Nitsuko switches at the 470 West Avenue facility and provided direction to unit technicians in the field as to their installation. According to Futrell, Barrett worked on the Nitsuko equipment in Respondent Navigator's warehouse space and employees of Respondent Navigator packed and shipped the equipment to the sites where they were to be installed.

Futrell generally performed his work for Respondent Navigator from his home in Atlanta. In March, Howard asked him to go to Respondent Navigator's Stamford office to assume the technical support duties of a discharged employee, Rusty McComb, until a replacement could be found. McComb had been the immediate supervisor of the unit employees. Futrell worked in the Stamford office for about 2 weeks in the beginning of March before returning to Atlanta. He resigned his employment with Respondent Navigator shortly thereafter and was hired by a competitor.[13] Futrell testified that, soon after his arrival in Stamford, he had a conversation with Grosso over drinks at a hotel. He and Grosso

[12] The record does not disclose when Respondents Navigator and Aviator changed their principal office addresses from 2 Stamford Landing.

[13] Futrell admitted that he was sued by Respondent Navigator within a few months of starting employment with his new company. He denied that he stole any of the Respondent's customers, although he acknowledged that some former customers of Respondent Navigator became customers of his new employer.

discussed Futrell's duties in Stamford and what was expected from him. During this conversation, Futrell asked Grosso what his job was. Grosso told Futrell that he was at Respondent Navigator to get back as much of Tom Kelly's investment as he could. Grosso did not contradict this testimony.

During his 2 weeks in Stamford, Futrell was able to observe the operations of Navigator and, to some extent, Aviator. According to Futrell, Navigator's office was on the second floor and Aviator's office was on the first floor in the warehouse space. The offices and warehouse space were served by the same phone system. He observed that there was no distinction in the warehouse between Navigator and Aviator parts and equipment, but conceded that he did not know which Company owned the material stored in the warehouse. As noted above, he did observe James Barrett working on the Nitsuko equipment for the Extended Stay America contract in the warehouse space, with Navigator employees doing the packing and shipping. All office machines, including copiers, fax machines, and computers, were located in the second floor offices of Navigator. Futrell testified that the only clerical employees in the building were employees of Navigator. Futrell also testified that a vehicle leased by Respondent Navigator, which Futrell had been told by Howard would be his vehicle while he worked in Stamford, was being used by James Barrett. Respondent Navigator rented another vehicle for Futrell to use instead.

There is no dispute that Respondent Aviator did not sell, install, or service hotel telephone systems. Other than the work it did building and programming Nitsuko switches for Respondent Navigator, Respondent Aviator's main business appears to have been performing telephone service and maintenance work for Respondent KM. Futrell testified that the Barrett's did this work, in addition to the work they did for Respondent Navigator. There is no evidence that any of Respondent Navigator's unit employees did the service and maintenance work of Respondent Aviator. Grosso testified that Aviator received work orders via the fax machine next to his desk from KM or one of its tenants. Grosso claimed, incredibly, that he did not know who owned this fax machine. Grosso and his partners would decide which of them did the work depending on what needed to be done. Aviator had no employees other than the three principals. On some of the work orders in evidence, the technician identified as doing the work is, "Navigator, Dennis." There is no dispute that Dennis Barrett was never on Respondent Navigator's payroll. On other service orders, the technician is identified as "Aviator, Jim." Respondent Aviator billed Respondent KM for the work it did by invoice. The invoices in evidence are stamped "paid." Grosso testified that he prepared all the invoices himself.

There is no dispute that Respondent Navigator was a customer of Respondent KM for telephone service. Telephone calling cards used by the Barretts and Grosso were billed to Respondent Navigator. Monthly telephone bills in evidence show that KM billed Respondent Navigator for telephone service in the same manner it billed its other tenants/customers. Bills for the month of January and February 1997 are addressed to Dennis Barrett. Those beginning in March have a different account number and phone number and are billed to Grosso at Respondent Navigator. These bills do not show that Respondent Navigator made any payments. Instead, Respondent KM credited Respondent Navigator's account from time to time for errors and other adjustments. By August 15, Respondent Navigator owed Respondent KM almost $46,000. An undated letter to Merritt at Respondent KM, on Navigator letterhead, signed by Grosso, refers to a July 16 letter from Meritt regarding "termination of our account." Grosso informs Merritt in this letter that Respondent Navigator is experiencing a cash flow problem. He asks Merritt to consider a barter arrangement under which Respondent Navigator would ship to Respondent KM a brand new, unopened Nitsuko telephone system it possessed, valued in excess of $10,000, in return for a credit to Respondent Navigator's account. Merritt accepted this offer on behalf of Respondent KM. The phone bill for the month ending August 15, also shows a credit of more than $16,000 "against Nav. Inv. #B110497, 110493, 109712." Grosso testified that he stopped paying the phone bill for Respondent Navigator when there was no money left in the Company. According to Grosso, he also stopped paying himself and the Barretts in June or July.

None of the Respondents called any witnesses to explain or contradict the evidence offered by the General Counsel. Counsel for Respondents Navigator and KM put two documents in evidence. The first is an "Audit Trail" of all transactions of Respondent KM. No witness was called to explain the accounting entries on the document which appears to be a record of various transactions, including some between Respondent KM and the other Respondents. The second document is a sample of a telephone bill for another of Respondent KM's customers and is identical in form to bills received by Respondent Navigator. Although Respondent had the opportunity to question Grosso after he was called as a witness by the General Counsel, Respondent did not inquire as to the circumstances surrounding the decision to go out of business. Grosso did not contradict Futrell's testimony regarding the conversation they had over drinks. As noted above, Grosso corroborated the other evidence in the record showing the involvement of Respondent KM in the creation of Respondent Aviator, the hiring of him and Dennis Barrett as consultants to Respondent Navigator, and his responsibilities and authority as an agent of Respondent Navigator.

B. Analysis

1. The unfair labor practices

It is undisputed that Respondent Navigator ceased operations and laid off all the unit employees on August 15 without any advance notice to the Union. In fact, the Union only received "notice" after Brimer was finally able to reach Grosso, almost a week later, and asked for notification in writing. Respondent Navigator argues that no violation should be found here because it ceased business under "emergent circumstances." The problem with this argument is that there is no evidence in the record before me of any of the circumstances surrounding the decision to close. The record contains no evidence showing when the decision was made, who made the decision, or the reason for it. Grosso's reference in his August 15 letter to the employees that Respondent Navigator had "exhausted its cash and credit" and was "functionally bankrupt" is not proof of same. The Board has historically held that an employer must notify the union representing its employees of a decision to close in advance in order to afford the union a meaningful opportunity to bargain. *Penntech Papers, Inc. v. NLRB,* 706 F.2d 18, 26 (1st Cir. 1983); *Los Angeles Soap Co.,* 300 NLRB 289 fn. 1 (1990); and *Metropolitan Teletronics,* 279 NLRB 957, 959 (1986), enfd. 819 F.2d 1130 (2d Cir. 1987). An employer can escape this requirement only by demonstrating that emergency circumstances justify late or no notice. *Raskin Packing Co.,* 246 NLRB 78 (1979). Respondent did not meet its burden here. Accordingly, I find that Respondent Navigator violated Section 8(a)(1) and (5) of the Act by failing to notify the Union in

advance of its decision to close, thereby denying the Union an opportunity to bargain regarding the effects of the closing.[14]

The only evidence in the record to show that Respondent Navigator failed to abide by the terms of the collective-bargaining agreement when it ceased operations and laid off the unit employees, is the hearsay testimony of Brimer of reports he received from the employees. None of the Respondents objected to this testimony. In fact, much of it was elicited by questions from counsel for Respondents Navigator and KM. The Board has held that hearsay, if unobjected to, is evidence which may be relied upon in making findings of fact. *Plumbers Local 589 (L & S Plumbing),* 294 NLRB 616, 618 fn. 5 (1989), citing *NLRB v. Operating Engineers Local 12,* 413 F.2d 705, 707 (9th Cir. 1969). See also *Iron Workers Local 46,* 320 NLRB 982 fn. 1 (1996). The Respondents did not dispute this testimony by showing that Respondent Navigator in fact paid the employees the accrued benefits and other money they were entitled to at the closing. Accordingly, I find that Respondent Navigator failed to abide by the terms of the collective-bargaining agreement by failing to pay employees who were terminated as a result of its closing their accrued vacation benefits, layoff gratuity, 401(k) contributions, insurance benefits, and unreimbursed employee travel expenses.

Respondent Navigator argues that this allegation amounts to nothing more than a claim of breach of contract which is outside the Board's jurisdiction. I disagree. The Board has long held that an employer's failure to abide by the financial terms of its collective-bargaining agreement without the Union's consent commits an unfair labor practice. *Oak Cliff-Golman Baking Co.,* 207 NLRB 1063 (1973). See also *Papercraft Corp.,* 212 NLRB 240, 241 fn. 3 (1974). When considered in the context of Respondent Navigator's failure to notify the Union of its decision to close in advance, the subsequent failure to pay accrued benefits under the collective-bargaining agreement amounts to a wholesale repudiation of the collective-bargaining relationship. Had the Union not learned of the closing from the employees, it is doubtful that any notice would have been given nor any attempt made to provide the contractual benefits to the employees. Finally, the fact that Respondent Navigator was experiencing financial problems and might not have been able to afford to pay the employees is not a defense to an unfair labor practice under Section 8(a)(5) and (d) of the Act. *Trojan Mining & Processing,* 309 NLRB 770, 771 (1992); and *Zimmerman Painting & Decorating,* 302 NLRB 856, 857 (1991). Accordingly, I find that Respondent Navigator violated Section 8(a)(1), (5), and (d) of the Act by failing to abide by the terms of the collective-bargaining agreement.

There is no dispute that the Union requested information from Respondent Navigator on September 5 when it filed its grievance over the cessation of operations. Specifically, the Union asked for a list of all unit employees and the amounts they were owed under the contract at the time of termination. Such information is presumptively relevant. *Ohio Power Co.,* 216 NLRB 987 (1975). It is undisputed that Respondent Navigator did not respond to this request, at least through the date of issuance of the complaint. Respondent Navigator thus violated Section 8(a)(1) and (5) of the Act.[15]

There is no dispute that the Union requested detailed information regarding the relationship between Respondents Navigator and Aviator in February 1998 and that, other than Grosso's letter on behalf of Respondent Aviator, none of this information has been provided. Because the information requested did not concern the terms and conditions of unit employees, it is not presumptively relevant. Relevance of the requested information to the Union's performance of its functions as statutory collective-bargaining agent must be demonstrated. Id. at 991. Where a union seeks information to establish an alter ego or single-employer relationship, the General Counsel must establish that the union had an objective factual basis for believing that one entity is the alter ego or single employer of another. *Maben Energy Corp.,* 295 NLRB 149 (1989). In the instant case, the only basis offered by the General Counsel for the Union's request is Brimer's testimony that he received reports from employees that Aviator was working on Navigator contracts after Navigator ceased operations. Brimer admitted that he had no evidence that this in fact had occurred. Moreover, the General Counsel also offered no evidence to show that Aviator was carrying out Navigator contracts after August 15. I find that these unsubstantiated rumors from employees were insufficient to establish a reasonably objective basis for the Union's February 13, 1998 request for information.

The Charging Party in its brief argues that an affidavit obtained by the Union's counsel from Futrell provided the objective basis for this request. That affidavit is not in evidence and Brimer did not mention it in explaining his reasons for sending the February 13, 1998 request. Moreover, it is clear that Futrell's affidavit was obtained in support of the unfair labor practice charge the Union filed in Case 34–CA–8215, which was amended the same date the letter was sent to Respondent Navigator to allege that Navigator and Aviator were a "single employer and/or alter egos." Although the Union had filed a class grievance under the collective-bargaining agreement over Respondent Navigator's failure to abide by the agreement, there is no evidence that the Union was pursuing the grievance at the time it made the request for this information. It appears that the Union had elected to pursue a remedy through the Board's processes. Under these circumstances, I agree with counsel for Respondents Navigator and KM that the Union's February 1998 information request "was akin to a discovery device pertinent to its pursuit of the unfair labor practice charge rather than to its duties as collective-bargaining representative." *WXON-TV,* 289 NLRB 615, 617–618 (1988). Accord: *Pepsi-Cola Bottling Co.,* 315 NLRB 882 (1994). Accordingly, I shall recommend dismissal of this allegation of the complaint.

2. Single employer

Having found that Respondent Navigator violated the Act in several respects, it becomes necessary to determine whether Respondents Aviator and KM should be held liable for Respondent Navigator's conduct on a single-employer theory. As set forth above, the test for determining the existence of a single-employer relationship turns on four factors, i.e., common ownership, common management, interrelation of operations, and centralized control of labor relations. *Radio Technicians Local 1264 v. Broadcast Service of Mobile,* supra. No one factor is controlling

[14] Respondent Navigator has attempted to show that it did offer the Union an opportunity to bargain over the effects of the closing. There is no dispute that no offer was made until after the complaint issued in this case, more than a year after Respondent Navigator laid off all unit employees. Such an offer to bargain, even if made, would not be a defense to the unfair labor practice found here. See *Thompson Transport Co.,* 184 NLRB 38 (1970).

[15] The issue whether the Respondent subsequently furnished the requested information, raised by the improper attachment to the brief filed by Respondents Navigator and KM, can be resolved at the compliance stage of these proceedings.

and all need not be present. "Single-employer status ultimately depends on 'all the circumstances of the case' and is marked by the absence of an 'arm's length relationship found among unintegrated companies.' Stated otherwise, the fundamental inquiry is whether there exists overall control of critical matters at the policy level." *Penntech Papers,* 706 F.2d at 25 (citations omitted). All of the Respondent's argue that the General Counsel has not met his burden in this case. In their view of the evidence, the General Counsel has proved the existence of only one factor, common ownership. The Respondents view the evidence in the record as establishing that all transactions among the three nominally separate entities were "arm's length transactions." For the reasons set forth below, I disagree with the Respondent's interpretation of the evidence.

As the Respondents seem to concede, there is proof of common ownership. Kelly and Merritt were at all times the principal owners and managing members of Respondents KM and Navigator. Respondent KM held a 20-percent share of Respondent Aviator and Respondent Aviator held a 10-percent share in Respondent KM. More important than the percentage of ownership is the degree of financial control exercised by Kelly and Merritt over the three companies. They were instrumental in the creation of each of the Companies. Although they reserved only a minority interest in Aviator, they solicited Grosso and the Barretts to go into business in this form and financed the business through the lucrative revenue guarantees made at a time when Aviator barely existed. The absence of common ownership as between Navigator and Aviator is not fatal where the same individuals exercised financial control over all three Companies. *Hydrolines, Inc.,* 305 NLRB, supra at 419.

The Respondents are correct that common ownership alone is generally not enough to establish a single-employer relationship. *Dow Chemical Co.,* supra at 288. As the Board said in *Dow Chemical, "*Common ownership by itself indicates only *potential* control over the subsidiary by the parent entity; a single-employer relationship will be found only if one of the companies exercises actual or active control over the day-to day operations or labor relations of the other." The undisputed evidence in the record here is sufficient to show that Kelly and Merritt exercised actual and active control of all three Companies. In addition to their role in the formation and financing of all three Companies, described above, the record shows that Merritt determined the initial labor relations policies of Respondent Navigator; that Kelly and Merritt, as managing members of KM and Navigator, determined that Grosso and Dennis Barrett should be hired as a consultant to run the day-to-day operations of Navigator and that Aviator would be the prime subcontractor of Navigator in the metropolitan New York and southern Connecticut area; and that Kelly orchestrated the move of Navigator's offices to the same building where Aviator had its offices. Moreover, it was Respondent KM that determined that Respondent Aviator would go into business to satisfy its needs for a contractor to perform maintenance and service work on the telephone systems it sold.

The evidence regarding the control exercised at the policy level by Kelly and Merritt, directly and through KM, satisfies the second criteria, common management. In addition, the record is replete with evidence that Grosso essentially ran Navigator and Aviator concurrently from the same office. Although there is not much evidence regarding the day-to-day operations of Aviator, the evidence there points to Grosso as the responsible management official of that Company. He acknowledged that, whereas the Barretts contributed their technical expertise to Aviator's business, he brought his financial and accounting expertise to the business. He admitted preparing all the invoices for Respondent Aviator and reluctantly conceded that he was involved in determining which of the three partners performed work orders received by Aviator. Because the Barretts performed all of Aviator's technical work, including work at customers' locations, Grosso is the partner most likely to be available in the office when an order came in or decisions had to be made. In any event, the Respondents offered no evidence to show that the Barretts actually managed any aspect of Respondent Aviator's business.

I credit Futrell's testimony regarding the interrelation of operations between Navigator and Aviator. Despite any incentive he might have had to testify against his former employer which had sued him, he impressed me as a more believable witness than Grosso, who was argumentative and evasive in his answers. His reluctance to answer questions directly left the impression he was attempting to conceal damaging information. In light of this reluctance, the admissions that the General Counsel and the Charging Party were able to extract from him were all the more convincing. Moreover, much of Futrell's testimony was corroborated by other evidence in the record, including admissions by the Respondents. The record thus establishes that, after January 1997, the two Companies shared common facilities in Stamford. Although they had ostensibly separate offices, the two Companies worked interchangeably in this space. Both companies used the same phone lines, office equipment, computer system, and warehouse. James Barrett, a partner of Aviator, worked side by side with Navigator's warehouse employees. He drove a vehicle leased by Navigator even though there is no evidence that he was hired as a "consultant" by Navigator. The three Aviator partners had telephone calling cards paid for by Navigator and there is no evidence that they were limited in using them on Navigator's business.

The Respondents argue that the apparent interrelation of operations does not satisfy the single-employer test because they were all arm's-length transactions, citing in particular the February 1996 agreement guaranteeing Aviator's first year's revenue. There is no evidence in the record to show how the amounts agreed to were arrived at by the parties to the agreement. It is not clear from the record whether the amounts represent fair market value for the services being performed. The record also does not disclose to what extent payments were actually made between the companies as reimbursement for services performed by the others. The most telling evidence establishing the absence of a typical arm's-length relationship is Grosso's direction to Futrell to specify in the Extended Stay America job cost summary that Aviator would do the assembly and programming of the Nitsuko switches at a cost to Navigator of $3500 per hotel. It is impossible to determine which hat Grosso was wearing in making such a lucrative deal for Aviator. Was he acting in his role as a consultant to Navigator or as a significant shareholder in Aviator? This blurring of the lines of distinction between nominally separate companies suggest that the companies function like divisions of a single-integrated company rather than as truly independent entities.

The Board has on occasion described the last factor, centralized control of labor relations, as the most critical. *Dow Chemical Co.*, supra; and *Alabama Metal Products, Inc.* 280 NLRB 1090, fn. 1 (1986). However, this factor becomes less important where some of the companies have no employees. *Three Sisters Sportswear Co.,* 312 NLRB 853, 863 (1993); *IMCO/International Measurement Co*., 304 NLRB 738, 740 (1991). See also *Denart Coal Co.,* 315 NLRB, at 853 fn. 13. Here it is undisputed that Respondents Aviator and KM had no employees at the time of the alleged un-

fair labor practices. Respondent KM utilized employees of other businesses within the KM group to perform work for it and utilized Respondent Aviator as a "subcontractor" to satisfy its maintenance and service needs. The three individual partners in Respondent Aviator performed all of the work themselves.[16] It is undisputed that Grosso and Barrett, in their role as "consultants" to Navigator, exercised supervisory authority over Navigator's unit employees. In addition, Merritt's determination of the initial labor relations policies of Respondent Navigator and he and Kelly's decision to hire Grosso and Barrett to run Navigator demonstrate that Respondent Navigator did not have independent control of its labor relations policies.

Based on the above, and the totality of evidence, I find that the General Counsel has met his burden of establishing that Respondents Navigator, Aviator, and KM functioned as a single-integrated enterprise and a single employer within the meaning of the Act. In light of the controlling role played by Kelly and Merritt in all three entities, it is appropriate that joint and several liability be imposed on the Respondents to remedy the unfair labor practices found herein. *Proctor Express, Inc.,* 322 NLRB 281 (1996).

CONCLUSIONS OF LAW

1. The Respondent, a single employer within the meaning of the Act, failed to bargain collectively with the Union, in violation of Section 8(a)(1) and (5) of the Act, by ceasing operations and laying off all its unit employees on August 15, 1997, without affording the Union advance notice and an opportunity to bargain regarding the effects of the cessation of business; and by failing and refusing to furnish the Union information it requested on September 5, 1997, regarding the terms and conditions of employment of unit employees.

2. The Respondent failed to bargain collectively with the Union in violation of Section 8(a)(1), (5), and (d) of the Act by failing to abide by the terms of the collective-bargaining agreement in effect at the time it ceased operations without the Union's consent to its midterm modification of the agreement.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Respondent did not violate Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the Union the information it requested by letter dated February 13, 1998.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Respondent make whole its unit employees who were laid off on August 15, 1997, for all benefits they were owed under the collective-bargaining agreement in effect at the time, including accrued vacation benefits, the layoff gratuity, any unreimbursed employee expenses, accrued 401(k) contributions, and insurance benefits.

I shall also recommend that the Respondent furnish the Union, to the extent it has not already done so, with a list of unit employees and the amounts each was owed under the collective-bargaining agreement, as requested in the Union's letter dated September 5, 1997.

Because the Respondent failed to afford the Union an opportunity to bargain regarding the effects of its closing, I shall recommend the traditional remedy for such violations, as established in *Transmarine Navigation Corp.,* 170 NLRB 389 (1968). See also *Melody Toyota,* 325 NLRB 846 (1998). Specifically, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of the Board's Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its cessation of operations on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of the Board's Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; and (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent Navigator ceased operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).[17]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondents, Navigator Communications Systems, LLC Aviator Voice/Data, LLC and KM Communications, LLC, Stamford, Connecticut, their officers, agents, successors, and assigns, shall jointly and severally

1. Cease and desist from

(a) Failing and refusing to bargain with International Brotherhood of Electrical Workers, AFL–CIO (the Union) regarding the effects of their decision to cease Respondent Navigator's operations on represented employees in the following unit:

> All technicians employed by Respondent Navigator who are engaged in the installation and service of telecommunications systems within the geographic United States; excluding employees covered by another collective-bargaining agreement, all clerical employees, professional employees, marketing representatives, all other employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to abide by the terms of the collective-bargaining agreement with the Union without the Union's consent

[16] There is some evidence in the record that Aviator utilized Navigator's clerical employees to perform office functions.

[17] Interest shall be computed in the same manner for any accrued benefits employees are due under the collective-bargaining agreement.

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Failing and refusing to furnish the Union, on request, with information regarding employees in the unit.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay to the unit employees who were terminated as a result of Respondent Navigator's cessation of operations limited backpay in the manner set forth in this decision.

(b) On request, bargain collectively with the Union with respect to the effects on the unit employees of their decision to cease Respondent Navigator's operations, and reduce to writing any agreement reached as a result of the bargaining.

(c) Make the unit employees whole for benefits they were due under the collective-bargaining agreement at the time of Respondent Navigator's cessation of operations.

(d) Furnish the Union with a list of unit employees and the amounts due them in accrued vacation, layoff gratuity, 401(k) matching funds and incurred employee expenses.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and coping, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, mail, at their own expense, an exact copy of the attached notice marked "Appendix"[19] to the Union and to all employees in the unit who were employed by the Respondent Navigator on the date it ceased operations. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondents' authorized representative.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain with International Brotherhood of Electrical Workers, AFL–CIO regarding the effects of our decision to cease Respondent Navigator's operations on represented employees in the following unit:

> All technicians employed by Respondent Navigator who are engaged in the installation and service of telecommunications systems within the geographic United States; excluding employees covered by another collective-bargaining agreement, all clerical employees, professional employees, marketing representatives, all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to abide by the terms of the collective-bargaining agreement with the Union without the Union's consent

WE WILL NOT fail and refuse to furnish the Union, on request, with information regarding employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay to the unit employees described above limited backpay in the manner set forth in the Board's decision.

WE WILL, on request, bargain collectively with the Union with respect to the effects on unit employees of our decision to cease Respondent Navigator's operations, and reduce to writing any agreement reached as a result of the bargaining.

WE WILL make unit employees whole for benefits they were due under the collective-bargaining agreement at the time of the Respondent Navigator's cessation of operations.

WE WILL furnish the Union with a list of unit employees and the amounts due them in accrued vacation, layoff gratuity, 401(k) matching funds, and incurred employee expenses.

NAVIGATOR COMMUNICATIONS SYSTEMS, LLC AND AVIATOR VOICE/DATA, LLC AND KM COMMUNICATIONS, LLC